



Assessing Marriages Without Surfacing the Specific Incidents

By Larry Gaughan

Most divorce mediators are understandably reluctant to give their clients the opportunity to debate the incidents that may have led to their decision to separate. Instead, we want to focus them on the options for an agreement that looks to their future, rather than to encourage them to adjudicate their past. And yet we all have seen many situations where having some ideas as to what happened to their marriage may help us to mediate a better agreement.

An experienced marriage counselor will have had plenty of opportunities to work with troubled marriages at the personal level. There will often be a string of incidents that reveals the problems of the marriage and the specific matters that need to be resolved. These issues need to be worked through if the goal is to save the marriage. But, an approach to the detailed problems of the marriage can be counter-effective in divorce mediation.

Nevertheless, a divorce mediator may be able to observe the more structural issues of the marriage in a way that both explains and transcends the particular incidents. For example, of necessity the mediator has the opportunity to observe how the spouses negotiate with each other. In many cases, it may appear that those negotiations are difficult not only because of what is at stake in the settlement, but because they also may reflect the dysfunctional negotiation patterns during the marriage. Knowing the structural reasons that some marriages fail helps understand why others seem to succeed, and the converse is also true.

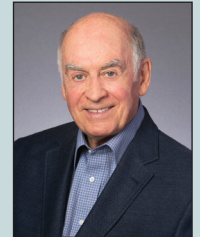
In my experience, seven structural factors leading to marital success are: (1) healthy self-esteem; (2) responsibility for self and to the marriage; (3) adaptability to change; (4) honest

communication for sharing and negotiating; (5) compatibility of interests and values; (6) nurturing intimacy, and (7) maintaining overall balance. Such a list might also include commitment, trust, and fidelity. However, while these three components are also basic to marital success, arguably they depend on one or more of the first seven, rather than vice-versa. Let us explore the negatives of each of these factors, that presumably lead to divorce:

Low self-esteem. Low self-esteem is contagious. It is one of the most serious problems in all human relationships. It is also something a mediator can observe when it comes out in various petty interactions, such as those involving defensiveness and jealousy. A spouse with low self-esteem may also exhibit a constant need to prove his or her own worth, or may seem to have an overblown sense of who he or she is. In contrast, people who like themselves and feel that their lives are on track are not threatened by the good fortune of others.

Low self-esteem is one of the most common causes of the incidents that lead to divorce. A spouse that has low self-esteem tends to look for faults in the marital partner and to find lots of things to criticize. Low self-esteem comes from a variety of sources, such as critical parents, addictions, lack of career satisfaction, and many others. A spouse with low self-esteem can be much more difficult to live with and to negotiate with than one who has a positive view of herself or himself. Insecurity is a closely related aspect of the same mix of negative emotions, yet may produce a slightly different effect.

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Lack of responsibility. Responsibility means responsibility for oneself and to one's spouse and family (and to the marriage). There are many tasks to divide up in a working marriage, either equally or with a balanced inequality. A proper sense of responsibility is the source of many other marital virtues – especially commitment, trust, and fidelity. So, the mediator can check out these characteristics and others to determine the extent to which irresponsibility is a problem.

Irresponsibility may mean too much focus on oneself and not enough on one's spouse or the marriage. It may also result from various addictions, including excessive spending. At times, it is simply laziness. Yet, over-responsibility is not a virtue if it detracts from a proper balance in the marriage and enables the other spouse to be under-responsible. It can also be used as a means for trying to control one's marital partner.

Inability to adapt to change. Any marriage faces a number of challenges as time passes. Children are born, a new career opportunity arises, a parent takes time off from a career to raise children, a child is diagnosed with ADHD, the family relocates, someone retires, and so forth. A spouse or a couple can generate changes, as well as simply react to them. Spouses also change through time. The person one married 20 years ago may be a quite different person today.

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The Professional Family Mediator

The Professional Family Mediator is the newsletter of the Academy of Professional Family Mediators, a professional organization dedicated entirely to the practice of Family Mediation as a profession. The newsletter is published quarterly as a member service.

Editorial Policy

In efforts to present a wide range of perspectives on the many issues facing family mediators, the views expressed by each contributing author are intended to encourage consideration and debate but do not necessarily represent the views of the Academy of Professional Family Mediators or its editorial staff.

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3600 American Blvd West
Suite 105
Minneapolis, MN 55431

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The Professional FAMILY MEDIATOR

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Editor's Notes

Family Mediation *Immigrants* and Family Mediation *Natives*

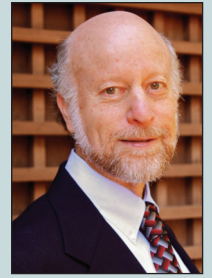
By Don Saposnek

Dear Readers,

Your Board of Directors of APFM has been contemplating and discussing ways to invite new (and younger) mediators into our organization, in order to establish the next generation of mediators to carry on our good work. We also have been discussing ways (if possible) to move towards creating mediation as a separate, stand-alone profession, rather than remain the historic, derivative amalgam of lawyers and therapists that it has been. In pondering these moves, I was reminded of a risk-management workshop that I recently attended titled something like: “Adventures on the Electronic Frontier: Ethics and Risk Management in the Digital Era.” In addition to once again scaring the pants off the participants (which these workshops in recent years typically accomplish!), as we’re told that we can no longer practice the ways we have done for years, a new concept was introduced: We are now practicing in era with a paradigm shift in risk-management—the digital age has seriously challenged our ways of protecting confidentiality of our clients.

At this workshop we were given the insight that the current generation of young people (~40 years old and younger) are “Digital *Natives*”—those who have grown up with the internet as a basic aspect of their daily lives and who have never known life without it. As such, they are completely comfortable navigating all the new electronic devices, with ease. However, the older generation (over ~50-60-ish) consists largely of “Digital *Immigrants*”—those who are new to this digital country of internet-based information and electronic gadgets. Some have accommodated to it relatively comfortably, while others have resisted accommodating to it and use few of its gadgets (perhaps just email). Last, are the “Digital *Aliens*”—those over ~70-ish who have not accepted this “new digital world” and have no computer or other electronic device, intentionally.

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As I contemplated the parallels between the digital era shifts and the mediation era shifts, I came to realize that family mediation is a derivative model, coming from the existing professions of law and mental health. That is, most of the “Family Mediation *Immigrants*” generation of current mediators largely came from one of those two disciplines. “Family Mediation *Natives*” are the younger population who are growing up in an era of family mediation as a viable and recognized field and do not have an existing history working in another professional culture (i.e. law or mental health).

Some Family Mediation *Immigrants* who come from the legal profession have moved into the field of family mediation because they grew tired of the adversarial approach for resolving family conflicts, some because of dwindling capacity to make a living as adversarial lawyers, some because of a desire to avoid conflict, and some because of exposure to mediation as an option in law schools. Family Mediation *Immigrants* from the mental health field have been increasingly exposed to cases of family turmoil, a persistently high divorce rate among their clients, and have witnessed first-hand the well-researched, negative long-term effects on children when inter-parental conflict persists, and have developed a desire to help families resolve conflict in kinder, gentler ways than through litigation.

Some Family Mediation *Natives* have, as children, participated directly in, and benefited from mediation through their own parents’ divorce, and/or have personally experienced high conflict through their parents’ litigated divorce, have been exposed to the numerous, intractable, international wars in the past several decades that had no satisfying resolutions, and have become disenchanted with the motivation to engage in fighting as a method of conflict resolution. As such, they are ripe for entering the field of mediation as their profession of ori-

gin and are the ones that will truly establish mediation as a separate professional field. And therefore, they are the ones that need encouragement to actively participate in our organization and our field, if we are to become a widely recognized, free-standing profession.

The Professional Family Mediator continues to offer to both the *Immigrants* and *Natives* useful perspectives and information about our craft. Our Feature Article, “Assessing Marriages Without Surfacing the Specific Incidents,” is a thoughtful piece written by Larry Gaughan that explores, from a lawyer’s point of view, how mediators, with little harm to the clients, can understand elements of the marriage to inform the negotiations in mediation. Next, we have a clever message in the form of a “Mediation Fable” about a princess and a frog, from our fearless, fighting first president of APFM who led our organization through the first two years aimed at establishing family mediation as a profession.

In our Fall 2013 Issue, we published an article by Amy Horowitz titled “*Marriage: A Promise We Shouldn’t Make.*” This article elicited a whole bunch of emotionally reactive reader responses. We have included those responses next. Ada Hasloescher’s Mojo Marketing then takes us to the next level in getting the word out about your practice—the “meet” part of the “meet and greet.” If you keep following Ada’s advice, you will doubtless be able to establish a productive and lucrative practice of family mediation (Ada offers a 100% money-back guarantee! ☺). While Chip doesn’t offer the guarantee, his experience is worth quite a bit. His Creative Solution column explores several very challenging client scenarios which we all have had to face at one point or another in our practices.

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APFM's First President's Message

A Mediation Fable

By Rod Wells

Once upon a time there was a beautiful princess with magical transformative powers who was courted by all the knights and noblemen of the realm. There were rumors that she could turn coal into diamonds, straw into gold threads, and currents into rubies, which made her, well you might say, the most eligible maiden of the land. The princess, though, was tormented by the narrow attention to her beauty and magical powers and she yearned to be known simply for her warm soft heart and fine character. So distraught was she that she would often seclude herself, finding solitude on the banks of a remote forest stream watching butterflies and imagining they were enchanted fairies. On one such occasion she was pleased to be joined by a little green wide-eyed slimy amphibian... yes, you guessed it, a frog.

But this was no ordinary frog, for he was very intelligent and cunning and knew of the princess' powers. Having heard the stories of frogs being turned into princes, he perched himself in his proudest pose on a mossy stump just at her eye level. With his chest thrust forward and his throat puffed out, he conjured up his most seductive croak. Well, you can imagine the princess was immediately swooning and had no choice but to lean forward ever so faintly and kiss him... and, with that, she turned herself into a little slimy frog.

Needless to say, the prince frog was now furious with his newfound admirer and demanded to know what insanity possessed her to abandon the original storyline. At first, the princess frog was dismayed that her prince frog was no better than all of her other self-centered suitors. She told him that his expectations had been unfair and wondered if he could find it in his heart to love her as a frog. The prince frog, still reeling from his disappointment, and despite his power legs, had no patience for such a leap of faith. He sat back on his hind legs and crossed his arms in stubborn withdrawal.

Now, as luck would have it, along came a butterfly (yes, an enchanted butterfly) and landed

Rod Wells has been a steadfast advocate of mediation throughout his career. He is Past-President of the New York State Council on Divorce Mediation, Past-President (and founding member) of the New York Chapter of the Association of Family and Conciliation Courts. He is a Founding Board Member of APFM and Advanced Mediator, a Certified Financial Planner® Certificant, and a Financial Neutral in collaborative divorce cases. When he is not mediating, he teaches courses on couples and family relations with his wife, Sandy.



on a nearby dittany plant just out of reach of either frog's long tongue. The butterfly, having heard all the commotion, asked, "Might I be of service in resolving your quarrel?" The prince frog said, "I'm tired of this slimy body, and now she wants me to love her slimy body." The princess frog said, "I just want to be cuddled all the time and have warm fuzzy feelings." The butterfly asked, "If there was a way for both of you to share a solution and both be satisfied, would you be interested?" Both resounded with, "Oh, yes!" The three were still brainstorming possibilities when the fireflies came out, and the moon was glinting through the pine boughs. Just then, the prince frog croaked, "Ribbit" and the butterfly said, "did you say rabbit? You know rabbits aren't slimy and they feel nice and fuzzy." Both frogs smiled and leaned into one another and, as they touched, they magically morphed into little green rabbits and hopped into the moonrise to live happily ever after. And that, children, was how mediation began.

Word spread through the land to the happy ending, and soon, court jesters, blacksmiths, parents, schoolteachers, and even kings and queens were doing mediation. As time passed, many began to hang shingles from their entryways offering mediation to any who yearned for a different path to a better place.

Now, many of you may have taken exception with some of the butterfly's process methods. While she did ask permission to help quarrelsome royalty, her opening statements and contracting were a little sketchy. That is, if you had been privileged to have been the first evaluator. But the butterfly was winging it, and as Arthur Ashe said, "Start where you are. Use what you have. Do what you can." and that is the purpose of the little frog story.

Mediation began with a desire to innovate and imagine a better way for relating and solving

differences in the context of life's slimy messes. It is just now, after decades as an on-the-job-training effort, it is being offered in academic settings. Family Mediation is still, for the most part, an OJT occupation, mastered only by the most persistent, diligent practitioners.

The field began where it was, with what it had, with what it could. It is still there, but at a new threshold of transforming itself into a recognized profession. Establishing an accredited certification will be a quantum leap forward for mediators, especially for the entry-level mediator, who will be able to offer his or her certification as a measure of competence to prospective clients. Competence, like many traits, falls along a continuum, and, in the case of Family Mediation, it is complicated by the interdisciplinary nature of the process. The question then becomes, "What level of overall competence in the aggregate of those various disciplines and experience should the Academy require for certification?"

In developing APFM's accredited certification program, there has been considerable discussion about how rigorous the certification standards should be and what determines competence. Merriam-Webster defines competence as "the ability to do something well." The National Commission for Certifying Agencies Standard 1 states, "The purpose of the certification program is to conduct certification activities in a manner that upholds standards for competent practice in a profession, occupation, role, or skill."

Some members of the Certification Committee have suggested substantial requirements as prerequisites before even taking a knowledge and performance test.

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Responses to Winter 2014 Feature Article by Amy Horowitz

“Marriage: A Promise We Shouldn’t Make”

Editor's Note: Thanks to all who responded. I've chosen to include herein anonymous snippets from the many reader responses we received, just to give a flavor of what readers concluded from this provocative article.

I think Amy builds a straw man to knock down. It isn't about "marriage." It is about commitment to intimate relationship. It is about commitment to discovering life as a shared trip. Marriage and children should exist to support this reality. Where it is not built on this, bad stuff will happen.

The article reminded me of three sources: Shakespeare, Jack Benny, and Fiddler on the Roof. Shakespeare: "Love is not love which alters when alteration finds," or, as Benny (and others) have said in referring to marriage: "I've considered murder often, divorce never." (Drum roll). And, Fiddler: When Golde is asked whether she loves Tevya, her first response is bewilderment, soon followed by that wonderful lyric, "For twenty-five years I've washed your clothes, cooked your meals, cleaned your house . . . If that's not love . . . What is?" In short, we are no more certain about love and marriage today than we have ever been, and there is no indication that such certainty will appear in the near (or distant) future. I don't agree with that sage, Doris Day, who opined that love and marriage go together like a horse and carriage—they don't. People marry for all sorts of reasons. Love (or what some twenty-five year old believes is love) may be one of the poorer ones. I am left convinced that there is no greater threat to marriage than inflated, unrealistic expectations. When such expectations are not met (and they rarely are, nor can be), people become discouraged. And, to quote one final source, Peggy Lee, they then ask themselves, "Is that all there is?" and call it quits, not infrequently prematurely.

How depressing. How can Amy's perspective be so negative and pessimistic? Did she never experience a satisfying relationship??

Is she a repeat jilted??

Amy does not address the issue of an ego maturing into awareness. I wonder whether this is possible without the intimate commitment of another.

I've always used the metaphor of each person in a couple living in a fish tank lined with mirrors. Every now and then, we get a glimpse through a small scratch in the mirror of our own tank and have the opportunity to see that others are also out there swimming around in their own tanks with similar small scratches to see outside of our reflected selves. Once in a great while the scratches line up, and two people can share an awareness of this human condition. And sometimes, they can decide to rely on each other to not be so completely and singly blind in our journey in this body. Seeing my ego self-reflected and accepted by another has allowed at least partial acceptance of my shadow self, an opportunity to remember to be aware.

I found the article very interesting, but extremely cynical, with a theme that reflects the concept that marriage equals "a glass of water is half empty" (given the 50% divorce rate). Horowitz clearly believes that feelings change over time and go south, which I find unsettling and more of a "self-fulfilling prophecy." I believe that a counter argument should be written, not based on the old kind of corn as to why people stay together, but on a contemporary view about how feelings grow, mature, get strong, not weaker over time. That would be a compelling read and follow-up to this article.

Very interesting and well-written article. Her final point about focusing on mutual respect rather than permanent marriage is an intriguing concept, both in terms of social/cultural implications and also the ways in which we commoditize marriage (e.g. wedding industry; religious/moral gold

standard for procreation; and even a financial services boon for tax exemptions and estate planning).

Well, this article does represent the many social changes occurring today. I think it's hard for us "oldies" to let go of our own cultural and moral ways of thinking and watch the newer generations "go with their flow." I don't know if it will bring more "happiness" as we know it. But, it seems to be part of how society is connecting in "different" meaningful ways, such as sitting with friends and texting face-to-face, instead of engaging in direct conversation. I even see this with parents and small children. People aren't connecting the same way. So, why should marriage not also change? Isn't there a phrase called "serial marriages?"

What's interesting to me, with the author going into psychology, is that she never mentions trying to work on a relationship that's changing. She never mentions "therapy." So I guess when couples fall out of love, they should just go their separate ways and try to be good friends.

How many of your friends are still in long-term marriages and still in love? What a concept!

As a marriage optimist, I feel it would be very sad for people to normalize abandoning the marriage ship before taking steps to increase the likelihood of smooth sailing. For example, designing a seaworthy vessel through communication/conflict resolution skills training and embedding resiliency training and child development education into our social curriculum may promote mutual respect, while also increasing the likelihood we could sail into the sunset with an emotionally healthy life partner.

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Mojo Marketing and Management

Networking 101 - 2 The "Meet" Part

By Ada Hasloecher

In the last installment of the Basics of Networking, I gave you an overview of a typical networking event and invited you to consider the question: "When does a networking event begin?" This was not a trick question. Well okay, maybe a little.

But here's the thing, for me, the idea of the event begins when I receive the invitation. So the first questions I ask myself are the following:

1. Do I like and respect the person who invited me?
2. Do I know the people or know about the people who are organizing it?
3. Am I clear about the purpose of the event and does it fit my purposes?
4. Will the other people attending be a good resource for me, and vice versa?
5. How far do I have to travel to attend and what time of the day/month/year is it?
6. What is the cost for attendance?
7. Is it worthwhile for me to block out the time for this occasion?
8. Will it be engaging, interesting, fun? Let's not forget the fun part!

If I can answer most of those questions with a "yes", then I'm in. But these questions bear thoughtful attention, so let's unpack them one by one.

First of all, whether you realize it or not, as soon as the invitation arrives—and it may come in person, by email or snail mail—you're probably unconsciously checking off the list above, or other lists like it in your head. That's good. But let's consider them consciously, lest you (and I'm talking specifically to you introverts out there), default to your usual position of an automatic "No." Even if numbers 1-4 are a "Yes," it's easy to boogie out on the numbers 5-8. I can already hear your answers as to the reasons why not:

Number 5: Traveling is a pain; It's too far; I'm too tired, It's too early; It's too late; The weather is bad; The weather is good (who

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wants to spend it indoors?)...

Number 6: I don't have or want to spend the money; If I'm driving, I have to pay for gas (at \$4.00 + a gallon), parking, tolls, etc.; I don't know how to or don't want to pay online and don't want to bring a check...

Number 7: It probably isn't worth it so why bother; People clique up and I'll be standing alone like an idiot with no one to talk to; I have better things to do, anyway (like getting into my jammies and watching TV); I really don't have to do this one at this time, I'll catch them on the next go-round...

Number 8: There's no way to really know if it will be interesting, and I'm guessing probably not; Is it worth it to get all dressed up when I don't have fun at these things to begin with? It's a have to, not a want to, and it takes SO much energy to just shore myself up to go...

As the former mayor of New York City, Ed Koch, used to ask: "How'm I doin'?" Did I hit at least a few nails on the head?

Let me tell you, even for us extroverts it's sometimes difficult to make the choice to go. There have been those cold, dark, winter mornings when the LAST thing I felt like doing was get out of my warm, cozy bed, put up that pot of coffee, jump into a shower and get MY mojo going for an 8:00 am breakfast meeting. OR, how about this one? Give up an evening (seeing clients) to attend a 6:00 dinner event?? Believe me, I've got a million excuses I would love to employ. And yet, every time I lie in bed trying to talk myself out of going, it never ceases to amaze me, that once I get there, I always meet someone whose connection

makes all the difference for me, and ultimately, my clients. No kidding.

Getting into the habit of attending these things is like priming the pump, getting that exercise routine in place – once you get going with it, it does get easier and more enjoyable. Let's face it, if you want to build your practice, one of the most important things you can do is get out there and become familiar to those who will likely refer business to you. And face-time is key, so excuses and reasons as to "why not" be damned! You may want to push yourself just a little bit and see what happens when you go. You may even, gahfabid, have fun!

So, when does the "meeting" of people actually start? I say, as soon as you accept the invitation. Whether it's by email or phone, you are instantly engaging with someone. You never know how that initial connection will impact your future relationship. If there is a request for an RSVP, then RSVP. This is key, for two main reasons:

1. Those who are hosting the event need a head-count, and the courtesy of a reply is important to them. You will be remembered as one who graciously complied. Also, you are setting yourself up as a person who is accountable and reliable.

2. You committed to go and it would be disingenuous to not show up.

Once you've committed to accepting the invitation, express interest, appreciation and enthusiasm to the person asking you. Remember, there is no party without YOU.

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THE CREATIVE SOLUTION

“Nobody Said This Would Be Easy”

By Chip Rose

My aspirational goal, when I first decided to experiment with this new idea called “mediation” in late 1979, was to work with highly functional, wealthy, low-conflict clients helping them reach agreements, while bidding farewell to the adversarial practice of law. Well, one out of four is not bad. In the course of this journey, there have been many hard-learned lessons. One of the most important is the realization that we have to accept the clients as they come into the process. I think of this as Newton’s First Law of Relationships—we can want people to be different but they are going to be who they are. The lessons for mediators are learning how to accept who they are, acquiring the skills to engage with who they are, and developing the capacity to facilitate a process that helps them achieve their goals. That the clients themselves, if they are to be successful, need to understand this First Law and embrace the reality of it is a topic for another column.

I recently had an initial mediation session that challenged all my facilitative skills, to say nothing of my patience. As is frequently the case, a mediator is faced with the raw dysfunction of two clients from the moment one sits down in a first session. We begin without the requisite time to learn who they are and what they need, or the opportunity to educate them about effective and ineffective behaviors. A variety of challenging behaviors and dynamics may be presented which requires an array of intervention strategies and responses. Inspired by this most recent experience, let me identify some of these issues.

Clients engaging in verbal attack-and-defend dialogue, from the opening bell.

In the particular instance which I am thinking about, the parties attacking and defending one another did not rise to a dangerous emotional level, such that I needed to intervene to protect either one of them. Rather, it was like watching two cars facing each other in the mud each with the wheels spinning and creating a verbal mess while gaining no traction whatsoever. The dynamic grew “out of control,” not as a result of escalating emotions or heated rhetoric

(in fact, the parties maintained their monologues within an intense but conversational tone). Rather, the lack of control resulted from their complete disregard of the agreed-upon protocols for the process and their laser focus on one another, while ignoring my attempts to help them become aware of the futility of what they were doing. My default style is to begin as facilitatively as works for the clients, and only begin moving along the Riskin continuum towards evaluative as circumstances require. In this instance, as my initial attempts to interject these observations verbally bounced off the energy beamed back and forth between them like a puff of wind off a tornado, I moved further down the continuum, holding my hands up in the universal sign of “time out.”

My next strategy was to close my pen, close my file, fold my arms and push back my chair in an act of unequivocal body language communicating my disengagement from what they were doing. I then reminded them of how much the session was costing them. Neither action dented the dynamic. This was when my patience took control. I had made special arrangements to see them at a time when I normally did not see clients, and I definitely would not have accommodated their circumstances had I known this is what they would do with the time I scheduled for them. It was at this point that I reached the other end of the continuum and commanded them to stop talking. The next stop on my intervention rail-line was for me to walk out of the room, which, thankfully, we did not need to get to. To the clients’ credit, they were not offended, and upon reflection, they agreed that what they were doing was getting them nowhere. That respite in the whirlwind of their conflict finally allowed me the opportunity to ask them if they would be open to a more effective method for identifying and exploring the issues to which they readily agreed.

Clients obsessed with pressing unrelated issues.

The practice of mediating relationship issues quickly teaches us that each is organically connected to every other issue like the strands of

a spider’s web. Assuming that the clients don’t want their settlement to look like a Jackson

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Pollock painting, it is also true that in order to make any sense of the issues and the options for resolving them, they need to be examined one at a time while identifying areas of interconnectedness between them. In this particular instance, the clients each maintained a death grip on their individual issues, thereby preventing any effective approach for understanding either of their interests, concerns, or objectives with their self-selected issues.

Having tried many more facilitative interventions, I finally pulled the plug on the wasted words and told the clients that I was going to use my mediator discretion and spend some time with each of them separately. Keeping in mind that this was a very first session, I did not yet know much about the clients, nor did they know me or the range of skills that I was putting at their disposal. The use of a caucus with each allowed me to do several things. One was to create a kind of initial connection with each that was not possible in the joint portion of the session. This is an opportunity to let each client hear in the calmness of a caucus environment that you as mediator care about their circumstances and that you can put at their disposal constructive and successful process approaches that will actually allow them to achieve their most important shared goals. This strategic intervention also allows the mediator to tailor a process response to the specific concerns of the client to whom one is speaking without having the other client becoming distracting because of his/her desire to focus on different and contrasting issues.

The Greek Chorus

As mediators, we all have to deal with the support people for each client who, in most instances are not actually at the table—what I call the “Greek Chorus.”

(Continued on Page 12)

The Ethical Edge:

Domestic Violence:

Screen All Cases Before Mediating?

By Bill Eddy

Before I get to the Ethical Edge Questions for the Winter, I want to share the feedback I did get on my last question: How Much Legal Information Should We Provide? Virginia Colin from Virginia shared the following thoughts:

How much legal information should family mediators provide? Plenty. We want our clients to be making voluntary, informed decisions. How can they make informed decisions if no one gives them information about what the laws say and what the courts routinely do with spousal support formulas, child support guidelines, the presumption that all the money that went into the breadwinner's IRA between the date of marriage and the date of separation is a marital asset subject to equitable distribution, etc.?

I encourage clients to consult lawyers so that they can get legal advice, not just information, but I can at least give them information. Some of my clients cannot afford to pay an attorney, or simply refuse to do so, therefore, my giving them information seems pretty important.

About the ethical edges between the practice of family mediation and the practice of law:

The standards of ethics for certified mediators in Virginia go a little overboard here and there but mostly are very good. You can find them at:

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/soe.pdf>

By the way, they do explicitly state that, acting as the parties' scrivener, a mediator who is not an attorney can write their Separation and Property Settlement Agreement.

Recently I attended some training about this question. The presenters were two members of the staff from Dispute Resolution Services at the Supreme Court of Virginia. (They are the folks who certify and monitor mediators in

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VA.) They were very clear about saying that we are allowed and even encouraged in some circumstances to provide information, and we must be very careful not to give legal advice. Where to draw the line between information and advice is not always clear, but in the Commonwealth of Virginia, it is definitely OK for mediators to provide information.

Thank you, Virginia. Your response well-articulates the general trend in so many states that I reviewed in the Fall 2013 issue of *The Professional Family Mediator*. We can, and should give some legal "information."

The next question for all APFM mediators to consider and respond to by sending your answers to me is this: Domestic Violence: Should We Screen All Cases? In conjunction with this question, here are four sub-ques-

tions for you all to consider:

- A. What percent of cases in your Mediation practice do you think have a D.V. issue (known or unknown)?
- B. Can you tell which cases have D.V. issues from individual screening interviews?
- C. Should you refuse to mediate a case with D.V. issues?
- D. What precautions do you (or will you) take to protect a victim of domestic violence?

Send me your comments – as long or short as you wish. Having an open discussion of these issues may improve our practices, while reassuring the public that APFM family mediators are realistic and cautious. I'll also share my thoughts on this in the next Issue of TPFM.

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A Call for Submissions to *The Professional Family Mediator*

We invite you to submit previously unpublished articles related to family mediation, including clinical insights, innovative programs, research studies, practice ideas, news updates, and letters to the editor with your responses to any of our published articles or columns. The editor will review submissions as they come in and will consider for publication those submissions that offer unique and innovative ideas for practicing family mediators. Please send your materials by email to the Editor, Don Saposnek, at: dsaposnek@mediate.com. Authors should include name, city and state/province, and other materials as requested by the Editor. If an article is selected for publication, the author will be requested to sign a Permission to Publish agreement and submit a photo and a brief Bio.

Standards Column

Request for Final Membership Input

By Carol Berz and Stephen K. Erickson

The Board of the Academy of Professional Family Mediators met in Chicago the last week in January. A major part of its work is to continue the effort necessary to implement a Certification Program that is long overdue for the profession of family mediators. Standards of Practice are important, as they are one of the ways competency and professionalism are measured. As Co-Chairs of the Standards and Ethics Committee, we are requesting that you make your final comments on changes, additions or amendments that you would like to suggest to the Standards Committee no later than March 31, 2014. The most recent version of the Standards can be found on APFM website (www.apfmnet.org).

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Stephen K. Erickson, J.D., is one of the founders of the original Academy of Family Mediators, started in 1980, and is a Founding Board Member of the Academy of Professional Family Mediators. He has practiced exclusively as a family mediator since 1980. He also helped create the first 40-hour divorce mediation training that took place in 1981, and he continues to write, teach and mediate.

Divorce Outside Court Soon Will be Possible in the Netherlands

By Pascal Comvalius

Proposed legislation in Holland will make it possible to file for divorce outside the traditional court, through a public civil servant, if both parties agree to file for divorce and they don't have any children younger than 18 years of age. The proposal has been sent to several organizations for review. The goal is to give the parties as much responsibility as possible in filing for divorce.

Currently, parties have to go to court with the assistance of an attorney. With the new proposal, this is not the case. Before they go to the public civil servant, parties can ask for juridical advice through a lawyer, a notary or a mediator. Going to court is still possible but is not an obligation.

Filings for divorce with children under the age of 18 still have to go through court. In the Netherlands, parties are obligated to make a parenting plan which has to be approved by the judge.

How will it work? Couples that want to di-

voice can fill out an application at the public civil servant's office. The divorce cannot be finalized before 14 days have passed. The public civil servant first needs to determine if the couple meets the requirements and, after that, the couple can make an appointment to go to the city hall. This is necessary for identification purposes and to make sure that both parties want to file for divorce. After that, the civil servant can ratify the agreement, which will appear in a separate register.

This way of divorcing is also possible for registered partnerships. Ending registered partnerships (without children) outside court is already possible, but there is still a notary or attorney needed. In the new situation, it will not be necessary to have the attorney or notary involved.

Pascal Comvalius began his mediation career in 2007 after a career in IT and Consultancy. He has been an IMI Certified mediator since 2013, and is also a MFN-registered mediator in the Netherlands, and he works with Erickson Mediation Institute. His has had extensive training in Kinetic Interviewing and Interrogation, developed by Stan Walters. Currently, he is pursuing emotional skill and competency training at the Ekman Group.



In Holland, 34,000 couples file for divorce each year and 14,000 of them are without kids under the age of 18. The government expects that in half of these cases (7,000) the public civil servant can fulfill that task of filing.

(Translation of the government newsletter published on the government website of the Netherlands.)

For more news on divorce innovations in the Netherlands, see:

http://www.nytimes.com/2012/05/27/business/the-divorce-hotel-a-true-weekend-getaway.html?pagewanted=1&_r=0

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“Assessing Marriages Without the Specific Incidents” Cont. from Pg. 1

Too much change can make the marriage unstable, if proper adjustments are not made. And, an excessive resistance to change may make for a rigid marital structure. Inflexibility or too much flexibility can both result in problems with effective spousal negotiations. Since separation and divorce are major life changes, many spouses in the mediator’s office might either be struggling to adapt their lives to their new situation or to resist any adaptation.

Faulty communication patterns. Communication between spouses has two separate structural elements; sharing and negotiating. Sharing is about honesty and intimacy and it helps build trust. Negotiating is about the reality that every marriage has decisions to make every day. Marital decisions may include everything from what to have for breakfast to whether one spouse should be a stay-at-home parent. In far too many marriages, one or both spouses do not expressly recognize when and how they are actually negotiating with each other. Pretending not to negotiate while seeking to put pressure on a decision is called “manipulation”. A marriage in which one party tries to control the decision process, and the other usually gives in, is a marriage that is unbalanced, and this often gives rise to problems in the mediation.

One of the most important assessments a mediator needs to make is how each member of the couple negotiates with the other. A mediator that understands the nature of ineffective negotiation can seek to find ways to make it more effective. This article does not presume to offer a short course in negotiating. However, there are several useful models. The model developed by David H. Olson (See: https://www.preparenrich.com/webapp/pe/faq/template/DisplaySecureContent.vm;pc=1383447562179;jsessionid=C12924867DB9AF529E0E0546E1E4CC9A?id=pe*faq*overview.html&emb_org_id=0&emb_sch_id=0&emb_lng_code=ENGLISH) diagrams an excellent way to understand the interactive nature of negotiations in a marriage. The Thomas-Kilmann model (See: <http://www.kilmanndiagnostics.com/overview-thomas-kilmann-conflict-mode-instrument-tki>) is directed to different individual styles of negotiating. The Roger Fisher-William Ury model (See: http://en.wikipedia.org/wiki/Getting_to_YES) looks to the concerns and interests that underlay the parties’ positions.

Incompatibility of interests and values. A marriage usually works best when the spouses generally share the same values and interests. Sometimes, marital partners can actually appreciate their areas of disagreement, and it is not unusual for the spouses to simply tolerate them, if the scope of differences is not too broad. But, it also may become important to find a creative way to work out the differences, especially when they relate to raising children. When such differences come out in mediation, the mediator needs to assess whether these differences are sufficiently significant that they need to be expressly dealt with in the agreement. For example, some separated parents can tolerate different bedtimes, but feel a need to work out a common policy on appropriate television limits for the children, whereas it may be the reverse for other parents.

Erosion of intimacy. Intimacy often seems to come rather early in a relationship. Frequently it starts with sexual intimacy. But the kinds of sharing that can be called “intimacy” in a successful marriage can be far broader in scope than sex. The real issue with intimacy is not how to create it, but how to extend and nurture it. In many marriages that end in divorce, the erosion of sexual intimacy is one sure sign that the marriage has run its course. By the time the couple reaches a mediator’s office, intimacy may seem to be completely gone, and some of the reasons for that are quite obvious. But, it is also not unusual to see a couple who have determined to divorce but still retain some elements of intimacy.

Overall imbalance. In one sense, balance is not a separate component of a successful marriage, but a compilation (individually and collectively) of the other six. It lies in the expression of responsibility for oneself and to the other spouse and the marriage. It refers to keeping the stability of the marriage in balance with all the changes in each spouse and in those internal and external to the marriage. The balance of a marriage will shift when one spouse becomes a stay-at-home parent, and shift again when that partner resumes an old career, or starts a new one.

One thing that can throw a marriage out of balance is when one party takes control over an

important element of the marriage to the exclusion of the other party. For example, it is not uncommon for the primary wage earner to totally control the finances, and the primary caretaker of the children to be in total control of things that most affect the children’s lives. To the extent that control of the essential elements of the marriage is out of balance, the more likely it is that other parts of the marriage will also be out of balance and that the mediation will be more difficult. If a marriage is out of balance, it is also more likely that the gap between the expectations of one or both spouses and the realities of their situation will lead to further difficulties.

Relevance to the Mediation Process

Any of the seven components of a dysfunctional marriage may create problems for the mediator, but they are not all of equal impact in a given case. Low self-esteem, irresponsibility, control issues and ineffective negotiating are among the ones most likely to result in a more difficult mediation. It is also important to remember that the parties are usually focused on the substantive issues of the settlement. So, a mediation may turn out to be difficult simply because the finances don’t work out well. Conversely, a mediation in which the substantive issues are relatively straightforward may be easy to resolve, even though there are serious emotional problems arising from the nature of the breakup. The need for the mediator to consider the nature of the emotional issues from the marriage is most obvious whenever the substantive issues of the case appear to be more difficult to settle than facts might justify.

Lack of trust may result from one or more of the above components. If it arises due to a party’s history of irresponsibility, it may be harder for the mediator to deal with than if it is a function of ineffective negotiating. When mistrust is also related to other components, such as low self-esteem or incompatibility, it may become a more serious problem. Since the level of trust or mistrust may affect the difficulty of the mediation, the mediator should have some sense of the source(s) of the mistrust.

(Continued on Page 11)

“Assessing Marriages Without the Specific Incidents” Cont. from Pg. 10

In a successful marriage, the emotions are mostly positive. In a “bad” divorce, they can be mostly negative. The adversarial legal system has traditionally fostered negative rather than positive emotions. But there are costs—often very heavy costs—in not having a sensible divorce. These are not only financial costs, but also the erosion of future cooperative parenting and distraction from practical career planning. Someone

who leaves a marriage full of anger and regrets may blame the institution of marriage itself, or may have serious difficulties in again becoming open to trust, fidelity and intimacy.

This structural analysis is original, in the sense that it is not based upon this lawyer’s reading of books and articles on marriage and the family. It comes instead from the

experience of handling over 3,000 cases as a mediator. There are many useful models for analyzing success and failure in marriages. This one is directed at the needs of divorce mediators. Any feedback from other mediators, especially those with experience in marriage counseling, will be welcomed and appreciated. You may contact me at ldgaughan@aol.com.

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“Family Mediation Immigrants and Family Mediation Natives” Cont. from Pg. 3

Bill Eddy’s The Ethical Edge column asks you questions about your views regarding mediator screening for domestic violence...that sticky wicket issue that continues to plague us all. Pondering such questions is a good exercise that helps us to gain increasing clarity in our thinking about our practices and procedures regarding this issue. Carol Berz and Steve Erickson’s brief article from the Standards of Practice committee is soliciting final member input to their draft of the APFM Standards. Please respond to

their call. This is your organization; please put your thoughts into it.

Last, we include an interesting notice, posted by Pascal Comvalius, titled “Divorce Outside Court Soon Will be Possible in the Netherlands.” Things in the divorce world are changing world-wide. In the next TPFM Issue, Pascal will be reporting on the notion of “Divorce Hotel,” which has gained steam in the Netherlands, and is spreading.

I leave you with this thought:

“When planning for success, include the question: How can this benefit all?”

- Ellen Grace O'Brian

Enjoy.

Don Saposnek

Editor

The Professional Family Mediator

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“A Mediation Fable” Cont. from Pg. 4

Some of these requirements (e.g. 90 completed mediation cases and 540 hours of face-to-face mediation) could limit the pool of candidates to those who have had substantial practice experience and preclude newer mediators who often struggle for several years just to get a handful of cases, but may nevertheless be competent mediators. These are important considerations, and everyone wants to be sure our certification is a respected designation. It becomes a matter of: “What defines doing something well?”, and “What proves and assures the ability to do it well?”

The self-made experts who lived through the years of OJT want to make sure we have high standards. These experts are you, APFM’s membership, and it is your responsibility to help define what it is that makes a Family Mediator competent and what proves and assures that. Some of you reading this may not be members or just not sure if you are in the category of expert. As mediators, you all have a responsibility

to contribute your voices and effort to this enterprise. We are not only defining mediation as a profession, but we are also setting standards for competence.

Professions are born out of the efforts of the established experts who have evolved in an emerging field. Since those experts define one end of the continuum, the question becomes, “What is the acceptable entry-level competence that defines the other end of the continuum?” In the future, establishing a designation of Diplomate or Master can further refine this continuum, but for now, APFM is creating certifiable standards to advance the success of the whole continuum of mediators and not just to limit competition, as some professions have tried to do.

So, here are some questions for you to consider in formulating your comments to the Board:

How much confidence should we place in the passing of a test as the basis for certification,

and what else is necessary beyond the test? What should be included in that test to evaluate a mediator’s knowledge base and process abilities? Must candidates have specific training and education based on the curriculum underlying the examination before they can take the test? Should a candidate be required to have a practicum, or a period of supervised practice? Should candidates be required to submit MOU’s or Separation Agreements for evaluation? How many cases should they have completed before they take a competence test, or can they take the test and complete the cases later, while still being a condition to certification? What standards (number of cases, successfully concluded cases or just cases, hours of mediation, education and training, subject areas, skill sets, ethical criteria, knowledge base) are appropriate for entry-level mediators who may not be experts but still meet a level of competence appropriate for certification?

(Continued on Page 12)

“A Mediation Fable” Cont. from Pg. 11

Should we utilize Webster’s definition, “the ability to do something well”? Should a candidate be allowed to complete the test and some training and then be allowed to use a provisional designation of certification (for instance, successfully completed a number of

hours of supervised practice).

The input from all of you will be the basis for a credible certification. It is meaningless without your voices. Please watch your email inboxes for specific surveys related to the

Certification effort and please forward your comments. Be part of the legacy that will put mediation in all the reference books and search engines as one of the professions.

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“Networking 101-2 The Meet Part” Cont. from Pg. 6

All invited guests bring a certain something to the event. The organizers are looking for a particular mix of people which is why you were invited in the first place. When you accept, do so with a full heart and a promise (to yourself) to help make the event a success – for them and for you.

One thing that you may also want to keep in mind is this: In the same way that you may be nervous about attending a networking event, remember that planning an event/party or any other type of gathering of people is equally nerve-racking for the host. If you’ve ever been in those shoes, you know what I mean. Aside from worrying about all the myriad of de-

tails, large, small and everything in between, that are involved in putting something like this together, no matter how small the gathering, the biggest hope of the hosts is that people will not only accept their invitation but will actually show up!

Next comes the actually greeting of the hosts and the people gathered for the event. I’ll get into the details of this in the next article, but I leave you with this: Upon your arrival—whether you come by car, subway, cab or foot—be prepared to do the following just before you step through the door:

1. If need be, hit the ladies/men’s room to

freshen your lipstick, tidy your hair, straighten your tie, blow your nose, floss your teeth, smile as you gaze in the mirror AND at the person at the sink next to you. They are probably there for the same event that you are, and just as nervous.

2. Turn your cell phone OFF (not just on vibrate - more to come on this).

3. Get those business cards out.

4. Take a big, cleansing breath—ready, set, forward MARCH!

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“Nobody Said this would be Easy” Cont. from Pg. 7

These people stand just outside the process and feel an unfettered freedom in giving their advice and counsel as to what the client should or should not be doing.

While the sincerity of their concerns is genuine, the value of their advice is generally worth what the clients pay for it—to wit, nothing. It should also be observed that it is far more enjoyable to vicariously mess with someone else’s troubles than to have to confront one’s own.

It is not every day that a parent of one of the

parties knocks on the door to the session, storms into the room, and demands to speak to his or her (adult) “child.” It is even more unusual for this to happen three or four times in the space of fifteen minutes—an hour and a quarter into the session. Nor have I had too many experiences in which the client, having calmed down the parent in the waiting room, then receives a call from a sibling on the other side of the country shouting into the phone that the client is getting “steamrolled” and needs to leave the mediation session right away. When this

type of situation occurs, there is an opportunity to bring another kind of intervention into play—empathic acknowledgment. It is difficult enough to work through the emotional, psychological and financial issues in divorce without being buffeted between the winds of “support” from one’s own dysfunctional family of origin. On the other hand, I can’t wait to see what the second session holds.

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Advanced Trainings - 2014

March 8 - The Center for Mediation and Training, New York City

How to Save Taxes as a Mediator, and The Marital Residence

March 20 - 22 - Straus Institute for Dispute Resolution Professional Skills Program in Dispute Resolution, Baltimore, Maryland. Faculty—Irwin Joseph and Donald T. Saposnek

<http://law.pepperdine.edu/straus/training-and-conferences/professional-skills-program-maryland/courses/family-law-mediation.htm>

Family Law Mediation: When Time is Not on Your Side.

April 4 - 5 - APFM 2014 Spring Advanced Training:

Holiday Inn National Airport Hotel

2650 Jefferson Davis Highway Arlington, VA 22202

Multicultural Issues in Family Mediation

Faculty: Ranna Parekh, MD, MPH, Don Greenstein, Robert Boyle, MD, Lawrence Gaughan

(Go to: <http://apfmnet.org/>)

April 8 - 11 - Advanced Training by Elder Decisions®, a division of Agreement Resources, LLC - Training held in Newton, MA.

Elder (Adult Family) Mediation Training - For mediators interested in expanding their practice to include the growing field of Elder / Adult Family Mediation. Learn specialized skills and techniques for working with seniors and adult families facing issues such as living arrangements, caregiving, financial planning, inheritance/estate disputes, medical decisions, family communication, driving, and guardianship.

Faculty: Arline Kardasis and Crystal Thorpe. For more information and future training dates, visit: www.elderdecisions.com/pg19.cfm, email training@ElderDecisions.com, or call: 617-621-7009 x29.

July 29 – August 1 - Elder Decisions®, a division of Agreement Resources, LLC

<http://www.elderdecisions.com/pg19.cfm>

Elder / Adult Family Mediation Training: A Program for Mediators Interested in Serving Elders/Adult Families.

Faculty: Arline Kardasis and Crystal Thorpe (www.elderdecisions.com/pg19.cfm).

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